

JUN-28-05 TUE 02:58 PM EGGLESTON CRAMER
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4. Based on all information presently available to the Board, Respondent appears to have scrupulously adhered to all terms and conditions of his May 7, 2003 agreement with the Board. Respondent and/or his attorney have maintained close communication with the Board and its staff with regard to all aspects of his compliance status. Respondent has promptly provided information or documentation required by the agreement or Board staff. Respondent has timely completed all continuing medical education coursework required by the May 7, 2003 agreement.

II. Respondent's Petition for Modification

5. By petition dated May 17, 2005, Respondent requested modification of his May 7, 2003 agreement with the Board. The Board's South Investigative Committee reviewed Respondent's petition, which was detailed and carefully drawn, and concurred in certain of the changes requested. The agreement of the parties, as set forth below, is based on the recommendations of the investigative committee following its review.

A. Consultation.

6. Paragraph 57 of the May 7, 2003 agreement (as previously amended by the Board) requires Respondent to meet at least quarterly with a Board-approved peer physician to discuss his care of patients, particularly Respondent's pain management and prescribing practices. Based on the current, well-established working relationship of Respondent and his consulting peer physician and his favorable compliance record, the second sentence of Paragraph 57 shall be modified to read as follows, "Such consultation shall occur as needed, upon the call of either Respondent or the consulting peer physician."

B. Board Rule 4.3.

7. Paragraph 59 of the May 7, 2003 agreement expressly prohibits Respondent from prescribing DEA Schedule II, III, or IV controlled substances for himself or family members. The parties agree here that Board Rule 4.3 includes substantially the same prohibition and that the first sentence of Paragraph 59 therefore is surplusage and may and shall be struck from the agreement in its entirety.¹

C. Prescribing Records.

8. Paragraph 61 of the May 7, 2003 agreement requires Respondent to retain an in-office, chronologically-ordered file of all prescriptions written by him for DEA Schedule II, III, and IV drugs. Respondent also is required to forward a copy of these prescriptions, on a quarterly basis, to the Board of Medical Practice for review. Pertinently, the Board's review of Respondent's prescribing activity since May 7, 2003 has identified no areas of concern or inconsistency with the terms of the May 7, 2003 agreement. Therefore, the parties agree that the third sentence of Paragraph 61, which requires submission to the Board of the compiled copies of prescriptions written by Respondent, shall be struck in its entirety. Respondent understands and agrees that he shall continue to retain an in-office file of all such prescriptions, as provided by the second sentence of Paragraph 61, and that these shall be subject to Board review upon request.

1. Board Rule 4.3 reads as follows:

4.3 SELF-PRESCRIBING AND PRESCRIBING FOR FAMILY MEMBERS

It is unacceptable medical practice and unprofessional conduct for a licensee to prescribe controlled substances listed in DEA Schedules II, III, and IV for his or her own use. Such conduct constitutes a violation of 26 V.S.A. § 1298. It also is unacceptable medical practice and unprofessional conduct for a licensee to prescribe Schedule II, III, and IV controlled substances to a member of his or her immediate family, except in a bona fide emergency, of short-term and unforeseeable character.

D. Treatment of Chronic Pain.

9. As required by Paragraph 68 of the May 7, 2003 agreement, Respondent does not accept new patients requiring care of chronic pain. Further, under the terms of Paragraph 63 of the May 7, 2003 agreement, Respondent may not prescribe DEA Schedule II, III, and IV drugs for any of his existing patients for longer than thirty days. The number of existing patients who are being treated for chronic pain by Respondent are reported to have declined by nearly 50 percent since May 7, 2003. So as to provide greater flexibility and continuity of care to Respondent's existing patient population, the parties agree that sentences two and three of the May 7, 2003 agreement shall be revised to provide that Respondent may prescribe DEA Schedule II, III, and IV drugs for existing patients for treatment of chronic pain for a maximum period of "ninety (90) days" (substituting this figure for the current "thirty (30) days" in each of the two sentences). All other provisions of the Paragraph 63 shall remain unchanged.

III. Agreement.

10. The parties agree here that the terms and conditions of the May 7, 2003 Stipulation and Consent Order may be amended as provided above in Paragraphs 5 through 9. Respondent agrees that he has read and carefully considered all terms and conditions herein and of the May 7, 2003 agreement. All other prevailing terms and conditions of the May 7, 2003 agreement shall remain unchanged and unaffected, and Respondent agrees to accept and be bound by all such terms and conditions while licensed to practice medicine in the State of Vermont or elsewhere and to be bound by these until such time in the future as he may be expressly relieved of these conditions, in writing, by the Vermont Board of Medical Practice.

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11. The parties agree that this Amendment to Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards.

12. This Amendment to Stipulation and Consent Order is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved by the Board. If the Board rejects any part of this Amendment to Stipulation and Consent Order, it shall be considered wholly void and the previously existing terms of the May 7, 2003 agreement shall prevail. However, should the terms and conditions of this Amendment to Stipulation and Consent Order be deemed acceptable by the Board, the parties request that the Board enter an order amending the May 7, 2003 agreement, as set forth above, and that Respondent's medical license thereafter be subject to the amended terms and conditions provided by the instant agreement.

Dated at Montpelier, Vermont, this 20th day of June 2005.

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:

James S. Arisman
JAMES S. ARISMAN
Assistant Attorney General

Dated at St Albans, Vermont, this 24th day of June, 2005.

Ned I. Shulman, M.D.
NED I. SHULMAN, M.D.
Respondent

Dated at _____, Vermont, this _____ day of _____, 2005.

ANNE E. CRAMER, ESQ.
Counsel for Respondent

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05603

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Dated at Montpelier, Vermont, this _____ day of June 2005.

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:

JAMES S. ARISMAN
Assistant Attorney General

Dated at _____, Vermont, this _____ day of _____, 2005.

NED I. SHULMAN, M.D.
Respondent

Dated at Burlington, Vermont, this 27th day of June, 2005.

ANNE E. CRAMER, ESQ.
Counsel for Respondent

FOREGOING, AS TO NED I. SHULMAN, M.D.
 APPROVED AND ORDERED
 VERMONT BOARD OF MEDICAL PRACTICE

Walter R. Sadler, MD
William J. Bond, MD
Sharon L. Wood
Thomas J. Young
David W. Chandler
Erin S. Evans
Russell J. Davignon

DATED: 7/6/05

ENTERED AND EFFECTIVE: July 6, 2005

Rescinded Re: Shulman, J.N. Not Approved by Board Until Training and Exam